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FROM: LOS DEL

E.O. 11652: N/A

TAGS: PLOS

SUBJECT: INFORMAL PLENARY OF JULY 5 ON ARTICLE 17 (LIMITATION ON
JURISDICTION) OF PART IV (COMPULSORY DISPUTE SETTLEMENT)

1. SUMMARY: THE DEBATE ON ARTICLE 17 WAS WELL-BALANCED BETWEEN THOSE PROPOSING THE DELETION OF SUBPARAGRAPH (1)(D) RELATING TO LIVING RESOURCES AND THOSE INSISTING ON ITS RETENTION. SEVERAL STATES ALSO URGED THE DELETION OF THE PROVISION RELATING TO MARINE SCIENTIFIC RESEARCH. MADAGASCAR PREPARED A REDRAFT OF ARTICLE 17 UNDER WHICH DISPUTES RELATING TO SOVEREIGN RIGHTS OF A COASTAL STATE WOULD NOT BE SUBJECT TO COMPULSORY ADJUDICATION, BUT DISPUTES RELATING TO EXCLUSIVE RIGHTS AND JURISDICTION WOULD BE AS LONG AS A PRIMA FACIE CASE WAS ESTABLISHED BY THE PLAINTIFF.

2. SPEAKERS INCLUDED HONDURAS, ARGENTINA, VENEZUELA, MADAGASCAR, THAILAND, THE FRG, TRINIDAD AND TOBAGO, INDIA, BAHRAIN, JAPAN,
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SEDEN, CZECHOSLOVAKIA, AND ALGERIA.

3. 17(1)(CHAPEAU): MADAGASCAR, IN DRAWING A DISTINCTION BETWEEN "SOVEREIGN RIGHTS" ON THE ONE HAND AND "EXCLUSIVE RIGHTS AND EXCLUSIVE JURISDICTION" ON THE OTHER, PROPOSED TO DIVIDE THE CHAPEAU INTO TWO PARAGRAPHS: QUOTE. (1) DISPUTES RELATING TO THE EXERCISE BY A COASTAL STATE OF

SOVEREIGN RIGHTS RECOGNIZED BY THE PRESENT CONVENTION SHALL NOT BE SUBJECT TO THE PROCEDURES FOR SETTLEMENT SPECIFIED IN SECTION II. (1)(BIS) DISPUTES RELATING TO THE EXERCISE BY A COASTAL STATE OF EXCLUSIVE RIGHTS OR EXCLUSIVE JURISDICTION RECOGNIZED BY THE PRESENT CONVENTION SHALL BE SUBJECT TO PROCEDURES SPECIFIED IN SECTION II IN THE FOLLOWING CASES ONLY. END QUOTE. THE REPRESENTATIVE PROPOSED ALSO MADAGASCAR TO SUPPRESS (1)(D) IN TOTO, TO REMOVE THE REFERENCE TO SCIENTIFIC RESEARCH IN (1)(C), AND TO CHANGE (1)(A)-(C) TO COMMENCE WITH THE CLAUSE "WHEN IT IS ESTABLISHED PRIMA FACIE THAT..." IN LIEU OF "WHEN IT IS CLAIMED THAT." HE EXPRESSED THE VIEW THAT THE CONCEPT OF ABUSE OF RIGHTS WAS NOT RECOGNIZED BY INTERNATIONAL LAW, AND WAS REPUGNANT TO NATIONAL SOVEREIGNTY. THE FRG, SUPPORTED BY JAPAN, STATED THAT ANY FURTHER RESTRICTION ON THE SCOPE OF COMPULSORY ADJUDICATION UNDER ARTICLE 17 WOULD BE UNACCEPTABLE. BAHRAIN PROPOSED THAT THE CHAPEAU BE DEFINED SPECIALLY BY REFERRING TO THE ZONES INVOLVED. SWEDEN SUPPORTED THE SWISS PROPOSAL THAT THE CHAPEAU BE REVERSED IN APPLICATION SO AS TO MAKE IT OPTIONAL RATHER THAN MANDATORY.

4. ARTICLE (1)(A)- THE FRG, SUPPORTED BY JAPAN, PROPOSED THAT "RELATED TO NAVIGATION AND COMMUNICATION" BE DELETED, AND SUPPORTED THE U.S. PROPOSAL THAT "RIGHTS" BE ADDED TO "FREEDOM." THE FRG FURTHER PROPOSED THE SUBSTITUTION OF "COMPATIBLE WITH THE PRESENT CONVENTION" FOR "RELATED TO LIMITED OFFICIAL USE

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NAVIGATION OR COMMUNICATION" AT THE END OF (1)(A). JAPAN, ARGENTINA, AND VENEZUELA STATED THAT THEY COULD ACCEPT 1(A) AS DRAFTED. MADAGASCAR SUPPORTED THE DELETION OF THE CLAUSE RELATING TO OTHER USES AND HONDURAS SUGGESTED REPLACING "OTHER" IN THAT CLAUSE WITH "ESTABLISHED EXPLICITLY BY THE PRESENT CONVENTION IN FAVOR OF OTHER STATES." SWEDEN PROPOSED THE DELETION OF THE WORDS "RELATED TO NAVIGATION AND COMMUNICATION," AND THE ADDITION OF THE CLAUSE "BY FAILING TO RESPECT THE RIGHTS ESTABLISHED BY THE CONVENTION IN FAVOR OF OTHER STATES." CZECHOSLOVAKIA, ON BEHALF OF THE LAND-LOCIED AND GEOGRAPHICALLY DISADVANTAGED STATE (LL/GDS), STATED THAT IN PART II SPECIFIC INCLUSION MUST BE MADE OF THE LL/GDS RIGHT OF ACCESS TO THE SEA THROUGH THE TERRITORY OF NEIGHBORING STATES AND ACCESS ON A PREFERENTIAL BASIS TO THE LIVING RESOURCES IN THE ZONES OF THEIR NEIGHBORING STATES. IT IS NECESSARY TO GUARANTEE THROUGH ADEQUATE SETTLEMENT PROCEDURES THAT THESE RIGHTS BE OBSERVED BY COASTAL STATES.

5. ARTICLE 1(B) - HONDURAS PROPOSED THE DELETION OF "IN CONFORMITY WITH THE PRESENT CONVENTION," AS THE NEGATIVE INFERENCE IF RETAINED WOULD BE THAT SUCH RIGHTS HAD AS

THEIR SOLE BASIS THE PROVISIONS OF THE CONVENTION; ON THE CONTRARY, THESE RIGHTS HAVE ALREADY EXISTED FOR 30 YEARS. THE FRG, ARGENTINA, AND BAHRAIN SUPPORTED THE RETENTION OF (1)(B) AS DRAFTED IN REV.2.

6. ARTICLE (1)(C) - THE FRG, SWEDEN, AND JAPAN PROPOSED THE INCLUSION OF "RIGHTS" BEFORE "STANDARDS AND CRITERIA" TO ENSURE THAT SCIENTIFIC RESEARCH WOULD EFFECTIVELY BE COVERED. MADAGASCAR AND INDIA OPPOSED THE INCLUSION OF SCIENTIFIC RESEARCH. THE BAHRAIN REPRESENTATIVE, IN ORDER TO STRIKE AN EQUITABLE BALANCE, STATED THAT (1)(C) SHOULD APPLY INsofar AS POLLUTION FROM SHIPS IN CONCERNED TO USER AS WELL AS COASTAL STATES. HE FURTHER MAINTAINED THAT SCIENTIFIC RESEARCH SHOULD NOT BE DELETED FROM 1(C). LIMITED OFFICIAL USE

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JAPAN PROPOSED THAT THE MARINE ENVIRONMENT AND SCIENTIFIC RESEARCH BE DEALT WITH IN SEPARATE PARAGRAPHS, AND THAT "COMPETENT INTERNATIONAL AUTHORITY" BE CHANGED TO "COMPETENT INTERNATIONAL ORGANIZATIONS OR DIPLOMATIC CONFERENCE."

7. ARTICLE 1(D) - INDIA, THAILAND, MADAGASCAR, VENEZUELA, ARGENTINA, AND HONDURAS PROPOSED THE DELETION OF 1(D). THE FRG, SUPPORTED BY BAHRAIN, TRINIDAD AND TOBAGO, SWEDEN, AND JAPAN, STOOD FOR THE RETENTION OF (1)(D) AND THE DELETION BOTH OF THE WORD "MANIFESTLY" AND OF THE PROVISIO CLAUSE RELATING TO SOVEREIGN RIGHTS. BAHRAIN PROPOSED THAT "GROSSLY OR PERSISTENTLY" BE SUBSTITUTED FOR MANIFESTLY," AND THE FRG PROPOSED THAT "BY ACTING BEYOND THE LIMITES OF ITS DISCRETION" BE INSERTED INSTEAD OF "MANIFESTLY". SWEDEN FURTHER PROPOSED THAT THE ADJECTIVE "LIVING" BE ABOLISHED. CZECHOSLOVAKIA PROPOSED THAT "SPECIFICALLY RECOGNIZED BY THE COASTAL STATE IN FAVOR OF OTHER STATES." BE ADDED AT THE END OF THE SUBPARAGRAPH INSTEAD OF THE PROVISIO. ALGERIA SUPPORTED THE RETENTION OF (1)(D) AS PART OF AN EQUITABLE COMPROMISE, AND ASKED FOR THE DELETION OF "MANIFESTLY." MADAGASCAR AND TRINIDAD AND TOBAGO PROPOSED THE DELETION OF 17(2). LEONARD

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